UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

NESTLE WATERS NORTH AMERICA, INC.

Employer

And

TEAMSTERS JOINT COUNCIL 42, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Petitioner

Case 21-RC-150198
Case 21-RC-150214
Case 21-RC-150229
Case 21-RC-150242

DECISION AND DIRECTION OF ELECTION

The only issue presented in these cases is whether the four petitioned-for units, each of which is, respectively, limited to certain employees at the Employer's Gardena, El Monte, Chatsworth, or Los Angeles, California facilities, is an appropriate unit for bargaining, or whether there must instead be a single unit, which includes the employees in the petitioned-for units, as well as certain employees at the Employer's other three L.A. Central California Zone facilities, which are located in Bakersfield, Nipomo, and Ventura, California. The Employer asserts that these seven facilities are so functionally integrated that they have lost any separate identity, and therefore the only appropriate unit is a multi-location unit comprised of all seven facilities.

The parties have stipulated that, in either event, an appropriate unit will include[1] employees in the following job classifications: Route Sales Representatives (RSR), Route Relief Specialists (RRS), Route Sales Representatives On-Demand (AYS), and Route Training Mentors (RTM).

The Employer further contends that, in addition to those classifications included in the four units sought by the Petitioner, an appropriate unit should also include two additional classifications: Field Service Representatives (POU), and Coffee Service Representatives.[2]

A hearing officer of the Board held a hearing in this matter on April 24, 2015, and the parties orally argued their respective positions prior to the close of the hearing. As explained below, based on the record and relevant Board law, I find that each of the four petitioned-for units is an appropriate unit.

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[1] The parties also stipulated that each unit shall exclude the following employees: All warehouse employees, production employees, transportation employees, logistics employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

[2] Currently, there are approximately 17 employees working in these two classifications at the four facilities for which petitions have been filed. There are approximately two employees working in these two classifications at the additional three facilities in dispute.

The Employer's Operations

The Employer is engaged in the production and distribution of bottled and canned beverages, including waters and teas, throughout the United States. The employees employed in the classifications in the petitioned-for units are engaged in the delivery and sales of beverage and coffee service in the cities of Gardena, El Monte, Chatsworth, and Los Angeles. The Employer also operates facilities located in Bakersfield, Nipomo, and Ventura, California.

These seven individual facilities are included in a service area the Employer refers to as its L.A. Central California Zone (Zone). These seven facilities vary in size and are situated across several different counties of Southern and Central California. The shortest distance between any two of the facilities is 11 miles (Los Angeles and Gardena) and the furthest is 160 miles (Gardena and Nipomo). Each of the seven facilities serves customers located within a distinct geographical area, set off from the other facilities by non-overlapping boundary lines. The approximate number of employees in the petitioned-for units is as follows: Gardena (44); El Monte (49); Chatsworth (52); and Los Angeles (116).[3] The multi-facility unit proposed by the Employer would include a total of approximately 288 employees.[4]

All seven facilities in the Zone are overseen by Zone Operations Manager James Schimmoler (Schimmoler). At each of the seven facilities, the employees working in the classifications at issue report to a Unit Leader. In consultation with the relevant Unit Leader, Schimmoler makes the final decisions about hiring, promotions, and discipline of the employees working in the classifications at issue. At a given facility, there may be as many as four Unit Leaders, with each one responsible for the assignment of a segment of the work performed at his or her respective facility.

In addition to the Unit Leaders, there are three Zone Service Leaders (ZSL) covering the seven facilities, who are responsible for ensuring that the drivers[5] are able to fulfill all customer orders each day. The three ZSLs are Joe Huerta, who works from the Employer's Los Angeles facility and has primary responsibility for that facility; Jean Tyler, who works from the Employer's El Monte facility and whose primary responsibility is the Employer's Gardena and El Monte facilities; and Angel Lomali, who works from the Employer's Chatsworth facility and whose primary responsibility is the Employer's Chatsworth, Ventura, Nipomo, and Bakersfield facilities.[6]

The work performed by Route Sales Representatives (RSRs), who make up the bulk of the employees in the petitioned-for units, consists of deliveries scheduled along pre-determined routes. An RSR reports to work each morning, clocks in, get his handheld computer and paperwork, attends a short meeting with his fellow workers led by his Unit Leader, and then goes out to his truck to check that it has been correctly loaded with the inventory he needs for the

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[3] If these numbers included the disputed classifications, the employee figures would be as follows: El Monte (53); Chatsworth (55); and Los Angeles (126).

[4] If the two disputed classifications were also included in this single unit, the total would be 307.

[5] As amply explained in the witnesses' testimony, the employees in the petitioned-for units are delivery drivers who primarily deliver water in bottles of varying sizes.

[6] The evidence presented at the hearing suggested that drivers generally interact only with the ZSL assigned to their facility.

day's deliveries. The trucks have usually been correctly loaded, so drivers can then depart to begin the day's work. Several drivers testified about this common routine they all follow, under which they are at the facility in the morning for as little as 15 minutes and as long as 45 minutes before they depart to begin the route. The drivers are out on their routes, working alone, for up to 12 hours each day. While working, they have no occasion to communicate with any employee at any facility other than their home facility. They might need to contact the ZSL, and may have to arrange to meet a nearby driver from the same facility, if inventory issues arise during the workday.

At times, a facility may not have sufficient inventory for the day's deliveries at the start of a workday, or a driver may run low on product due to unanticipated customer requests or up sales.[7] This problem is remedied by a ZSL, who will assign another driver to bring this needed product out to the driver, in the field. The driver called upon to assist could, theoretically, be from any facility within the Zone, but it appears that the driver would likely be from the same facility, given the boundaries of each facility's service area. The Employer refers to this practice, which is employed nearly every day, as "day field loading."

Once a driver has completed all of the scheduled deliveries along his route, he again returns to the same facility and has to complete an accurate count of his remaining inventory. Drivers may be at the facility for this end-of-day process for anywhere from 45 minutes to an hour, before they can clock out and go home.

All of the drivers in the petitioned-for units drive trucks, but only the RRS, RSR, and RTMs are required to maintain a commercial driver's license. All employees in the petitioned-for units wear uniforms. The uniforms are all similar, with different colors and brands; and the uniforms worn by the RSR and AYS drivers are identical.

All of the employees in the petitioned-for units share a common operations manager as well as recruitment and human resources personnel. They enjoy the same employee benefits, which are set at the corporate level, and they are expected to abide by the same policies and employee-handbook provisions, which are also set at the corporate level. The concept of seniority is recognized within the Zone, but only for the purpose of scheduling vacation time, and on a facility-by-facility basis.

The record is equivocal about the consistency of wages paid to the drivers assigned to work at the seven facilities in the Zone. There was testimony that wages are set at the national level, leaving the Zone without any authority to increase wages. However, there was also testimony that the wages rates within the Zone were the same, and were recently raised following a market survey.[8]

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[7] Most of the drivers are expected to engage in "up-selling" (urging customers to add additional products or services to their existing order).

[8] There was testimony that wage rates are currently higher in Bakersfield, Nipomo, and Ventura, because the market survey increase has not yet been implemented in the four facilities for which petitions were filed, as a result of the Union's demand for recognition. The Employer claims that this increase will be granted to employees in these four facilities at a later time, and that they are, in the meantime being collected in an accrual account.

The evidence shows that, for the most part, it is only in rare circumstances that a driver, for business purposes, visits a facility other than his home facility, or interacts with employees at a facility other than their home facility. Examples of these circumstances may include new-employee orientation, a vehicle breakdown requiring a tow to a facility staffed with mechanics, and infrequent trainings and meetings.

Only two of the seven facilities in the Zone operate on Saturdays: Chatsworth and Los Angeles. Drivers who are assigned to work on Saturdays are deployed to work out of one of these two facilities.[9] It appears that the Saturday work is the same as the work performed on other days of the week, other than possibly the location of the facility reported to and possibly the area where the work is performed.

Board Law

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate, unless it has been so effectively merged or is so functionally integrated that it has lost its separate identity. The party opposing the single-facility unit has the heavy burden of rebutting its presumptive appropriateness. To determine whether the single-facility presumption has been rebutted, the Board examines (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any exists. See, e.g., *Trane*, 339 NLRB 866 (2003); *J & L Plate, Inc.*, 310 NLRB 429 (1993).

In its decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), enfd. 727 F.3d 552 (6th Cir, 2013) the Board modified the framework to be applied when a petitioner seeks a unit consisting of employees readily identifiable as a group who share a community of interest, but another party seeks a broader unit. The party seeking the broader unit must demonstrate "that employees in the larger unit share an overwhelming community of interest with those in the petitioned-for unit." Slip op. at 12-13. The additional employees share an overwhelming community of interest only where there is no legitimate basis upon which to exclude them from the unit because the traditional community-of-interest factors overlap almost completely. Slip op. at 11-12.; *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163, slip op. at 3 (2011).

The Board did not indicate in *Specialty Healthcare* whether the analytical framework in that case should apply to the issue here, which is whether a single-facility unit or multi-facility unit is appropriate for collective bargaining. Because the framework set forth in *Specialty Healthcare* appears applicable, in addition to analyzing this case pursuant to the Board's traditional five-part test as described above, I will also analyze this case using the *Specialty Healthcare* framework.

Application of Board Law to this Case

[9] There was no evidence presented regarding how many drivers perform Saturday (generally overtime) work or about the assigned home facilities of the drivers who report to work at either Chatsworth or Los Angeles on Saturdays.

In reaching the conclusion that the single-facility unit is appropriate in each of these cases I rely on the following analysis and record evidence.

1. Central Control over Daily Operations and Labor Relations

The Board has made clear that "the existence of even substantial centralized control over some labor relations policies and procedures is not inconsistent with a conclusion that sufficient local autonomy exists to support a single local presumption." (citations omitted) *California Pacific Medical Center*, 357 NLRB No. 21, slip op. at 2 (2011). Thus, "centralization, by itself, is not sufficient to rebut the single-facility presumption where there is significant local autonomy over labor relations. Instead, the Board puts emphasis on whether the employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems." (citations omitted) *Hilander Foods*, 348 NLRB 1200, 1203 (2006). Therefore, the primary focus of this factor is the control that facility-level management exerts over employees' day-to-day working lives.

The employees at all seven facilities in dispute here are all subject to the same human resources and operations management leadership, policies, employee handbook, employee-benefits programs, and similar wage rates; and each facility has its own supervisory staff. The record indicates that the Unit Leaders are responsible for the day-to-day assignment of work at each facility, although it is unclear how much autonomy they have with regard to employees' day-to-day working lives, including decisions about hiring, promotions, and discipline, which are made in consultation with Zone Operations Manager Schimmoler. See *Petrie Stores Corp.*, 266 NLRB 75, 76 (1983).

This factor does not clearly point towards, or against, a finding regarding the appropriateness of the four requested single-facility units.

2. Similarity of Skills, Functions, and Working Conditions

The similarity or dissimilarity of work, qualifications, working conditions, wages, and benefits among employees at the facilities the Employer contends should be in the unit has some bearing on determining the appropriateness of the single-facility unit. However, this factor is less important than whether individual facility management has autonomy and whether there is substantial interchange. See, for example, *Dattco, Inc.*, 338 NLRB 49, 51 (2002) ("This level of interdependence and interchange is significant and, with the centralization of operations and uniformity of skills, functions and working conditions is sufficient to rebut the presumptive appropriateness of the single-facility unit.")

Evidence of functional integration is also relevant to the issue whether a single-facility unit is appropriate. Functional integration refers to when employees at two or more facilities are closely integrated with one another functionally notwithstanding their physical separation. *Budget Rent A Car Systems*, 337 NLRB 884 (2002). This functional integration involves employees at the various facilities participating equally and fully at various stages in the

employer's operation, such that the employees constitute integral and indispensable parts of a single work process. Id. However, an important element of functional integration is that the employees from the various facilities have frequent contact with one another. Id at 885.

With the exception of working from geographically separate facilities, it appears that the drivers in all seven facilities at issue engage in the same work, have the same qualifications, share identical skills, functions, and working conditions. With some exceptions, employees at all seven facilities within the Zone work under the same employee handbook, receive identical benefits, perform substantially similar work, and are paid with hourly wages based upon a similar wage scale.

With the exception of the Route Relief Specialists (RRS), who are expected to temporarily cover routes in more than one facility, as assigned, there is no evidence showing any significant coordination and or contact between the employees in any of the seven facilities. In addition, there is some limited evidence of employees being granted permanent transfers among the facilities, though it is not clear how commonly such transfers were requested or granted. Regardless, however, such evidence of functional integration does not rebut the appropriateness of the single-facility units sought by Petitioner, absent evidence that the functional integration results in frequent contact between employees at the different facilities.

I have carefully considered the evidence in the record that shows some degree of functional integration between the employees in these seven Employer facilities. Significantly, however, it does not show that it has resulted in significant interchange, or personal and or telephone contact between employees at the facilities.

3. The Degree of Employee Interchange

Employee contact is considered interchange where a portion of the work force of one facility is involved in the work of the other facilities through temporary transfer or assignment of work. However, a significant portion of the work force must be involved and the work force must be actually supervised by the local branch to which they are not normally assigned in order to meet the burden of proof on the party opposing the single-facility unit. *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999). For example, the Board found that interchange was established and significant where during a one-year period there were approximately 400 to 425 temporary employee interchanges among three terminals in a workforce of 87, and the temporary employees were directly supervised by the terminal manager from the terminal where the work was being performed. *Dayton Transport Corp.*, 270 NLRB 1114 (1984).

On the other hand, where the amount of interchange is unclear both as to scope and frequency because it is unclear how the total amount of interchange compares to the total amount of work performed, the burden of proof is not met, including where a party fails to support a claim of interchange with either documentation or specific testimony providing context. *Cargill, Inc.*, 336 NLRB 1114 (2001); *Courier Dispatch Group*, 311 NLRB 728, 731 (1993). Also important in considering interchange is whether the temporary employee

transfers are voluntary or required, the number of permanent employee transfers, and whether the permanent employee transfers are voluntary. *New Britain Transportation Co.*, supra.

Here, the evidence shows that the RRS drivers, a small percentage of the workforce (approximately 15 of drivers out of a total of 261 in the four petitioned-for units, and about 2 of the drivers in the three additional facilities within the Zone that the Employer contends must be included in the single unit) are sometimes assigned to work in other facilities. In this regard, I note that the record evidence shows that this work is sporadic, as it only consists of coverage for absent drivers. The record indicates that these drivers continue to be supervised by the unit leaders at their home facility. Though some employees have been permitted to voluntarily transfer, apparently on a permanent basis, from one facility to another, and or one position to another, it is not clear how regularly this occurs throughout the Zone. The analysis under this factor supports a finding in favor of single-facility units.

4. Distance Between Locations

While significant geographic distance between locations is normally a factor in favor of a single-facility unit, it is less of a factor when there is evidence of regular interchange between the locations, and when there is evidence of centralized control over daily operations and labor relations with little or no local autonomy, particularly when employees at the facilities otherwise share skills duties, and other terms and conditions of employment, as well as are in contact with one another. *Trane*, supra at 868.

As stated above, the seven facilities at issue in this matter are spread across a 160-mile distance from southern California to central California. In view of my conclusions regarding the first three factors, I conclude that the substantial distance between several of the facilities at issue here further supports my conclusion that four single-facility units, not one unit consisting of four, or seven facilities, is appropriate.

5. Bargaining History

The absence of bargaining history is a neutral factor in the analysis of whether a single-facility unit is appropriate. *Trane*, supra at 868, fn. 4. Thus, the fact that there is no bargaining history in this matter does not support or negate the appropriateness of the units sought by Petitioner.

***Specialty Healthcare* Analysis**

Finally, I apply the analysis set forth in *Specialty Healthcare*. Consistent with my conclusion when applying the traditional Board test for multi-location unit issues, I conclude that the four single-facility units sought by Petitioner are each appropriate.

Each group of employees working in the four petitioned-for units in the Employer's Gardena, El Monte, Chatsworth, and Los Angeles, California facilities, constitutes a readily identifiable group that shares a community of interest, as contended by Petitioner, as they are separated geographically from other facilities, and share common supervision by the relevant Unit Leaders, at the start and end of each workday, and sometimes during the workday; the

employees at a given facility interact with one another (and for the most part, not with workers at other Employer facilities); the drivers at a given facility are treated the same, with respect to terms and conditions of employment, including wages; and they perform largely similar work.

The evidence does not demonstrate, on the other hand, that the employees at the Employer's Bakersfield, Nipomo, and Ventura, California facilities share an overwhelming community of interest with the employees of the four petitioned-for units.

Findings and Conclusions

I have carefully considered the record evidence and weighed the various factors that bear on the determination of whether single-facility units are appropriate and determined that the four single-facility units sought by Petitioner are appropriate. In reaching my conclusion I rely, in particular, on the following: the distances between the facilities; the fact that each facility has separate supervisors; the fact that the service areas served by the seven facilities in the Zone do not overlap; and that there is little functional integration between the majority of the employees the Employer proposes to combine into one unit – they simply do not interact with employees at any other Employer facilities.

Because I conclude, as set forth below, that the units sought by Petitioner are appropriate for collective bargaining and that a question of representation exists under Section 9(c) of the Act, I am directing elections in this matter. Moreover, because the Employer's contention concerns whether certain additional individuals should be included in the units and therefore concerns their eligibility to vote, I further conclude that the Employer's contention need not be litigated or resolved before the elections are conducted because the resolution of the issue would not significantly change the size or character of the units.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Therefore, upon the entire record in this proceeding, and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[10]

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

[10] The parties stipulated as follows: The Employer, Nestle Waters North America, Inc., a Delaware corporation with its principal offices located in Stamford, Connecticut and distribution facilities located in Gardena, El Monte, Chatsworth, Los Angeles, Bakersfield, Nipomo, and Ventura, California, is engaged in the production and distribution of bottled and canned beverages, including waters and teas. During the past 12 months, a representative period, the Employer purchased and received, at its southern California facilities, goods valued in excess of $50,000, directly from points located outside the State of California.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Pursuant to Section 102.63(b)(1) of the Board's Rules and Regulations, prior to the hearing in this matter, the Employer submitted a Statement of Position. The Employer's Statement of Position reveals that the Employer contests the appropriateness of the units sought by Petitioner, inter alia, on the basis that they exclude employees in two classifications: Field Service Representatives (POU) and Coffee Service Representatives.

I conclude that the Employer's Statement of Position establishes that the Employer is disputing the exclusion of certain individuals from the units, and therefore is contesting the eligibility of certain individuals to vote. After consulting with and pursuant to instructions from the Regional Director, the hearing officer provided the Employer with an opportunity to further explain its position on the record.

The Employer's presentation at the hearing makes clear that consistent with its Statement of Position, the Employer is indeed raising eligibility issues implicating a total of 17 individuals, compared to a total of 261 employees (less than 7 percent) whom the parties agree are included in the four petitioned-for units, as follows: El Monte - 4 disputed, compared to 49 who are agreed upon as included in the petitioned-for unit at the El Monte facility (less than 9 percent); Chatsworth - 3 disputed, compared to 52 who are agreed upon as included in the petitioned-for unit at the Chatsworth facility (less than 6 percent); and Los Angeles - 10 disputed, compared to 116 who are agreed upon as included in the petitioned-for unit at the Los Angeles facility (less than 7percent).[11]

Because the Employer's Statement of Position raises eligibility issues affecting, at most, less than 9 percent of the units, I conclude that the Employer's contentions do not significantly change the size or character of the units and thus are not relevant to a question concerning representation. Therefore, I instructed the hearing officer to not allow the parties to present evidence on these issues, as I concluded that it was unnecessary to resolve the eligibility issues before the elections are conducted.

Therefore, consistent with Section 102.64 of the Board's Rules and Regulations, I am directing an election in each of these matters, and I further order that the individuals in the classifications of Field Service Representatives (POU) and Coffee Service Representatives may vote in the elections, but their ballots shall be challenged since their eligibility has not been determined. The eligibility or inclusion of these individuals will be resolved, if necessary, following the elections.

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[11] The Employer did not identify any employees in either classification to be added to the petitioned-for unit in the Gardena facility. If the employees working in these two classifications were combined with the employees in the petitioned for units, as urged by the Employer, into one multi-facility unit including the seven facilities in the L.A. Central California Zone, the total number of disputed employees excluded would be 19, compared to 307 who would be agreed upon as included in the petitioned for unit (less than 7 percent).

5. In view of the foregoing and the record as a whole, I find the following employees of the Employer constitute units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

In Case 21-RC-150198:

Included: All Route Sales Representatives (RSR), Route Relief Specialists (RRS), Route Sales Representatives On-Demand (AYS), and Route Training Mentors (RTM) employed by the Employer at its facility located in Gardena, California.

Excluded: All warehouse employees, production employees, transportation employees, logistics employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

In Case 21-RC-150214:

Included: All Route Sales Representatives (RSR), Route Relief Specialists (RRS), Route Sales Representatives On-Demand (AYS), and Route Training Mentors (RTM) employed by the Employer at its facility located in El Monte, California.

Excluded: All warehouse employees, production employees, transportation employees, logistics employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

In Case 21-RC-150229:

Included: All Route Sales Representatives (RSR), Route Relief Specialists (RRS), Route Sales Representatives On-Demand (AYS), and Route Training Mentors (RTM) employed by the Employer at its facility located in Chatsworth, California.

Excluded: All warehouse employees, production employees, transportation employees, logistics employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

In Case 21-RC-150242:

Included: All Route Sales Representatives (RSR), Route Relief Specialists (RRS), Route Sales Representatives On-Demand (AYS), and Route Training Mentors (RTM) employed by the Employer at its facility located in Los Angeles, California.

Excluded: All warehouse employees, production employees, transportation employees, logistics employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

Others Permitted to Vote: At this time, no decision has been made regarding whether Field Service Representatives (POU) and Coffee Service Representatives are included in, or excluded from, the four petitioned-for bargaining units, and individuals in those classifications may vote in the elections, but their ballots shall be challenged since their eligibility has not been determined. The eligibility or inclusion of these individuals will be resolved, if necessary, following the elections.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct secret ballot elections among the employees in the units found appropriate above. In each election, employees will vote whether or not they wish to be represented for purposes of collective bargaining by Teamsters Joint Council 42, International Brotherhood of Teamsters.

A. Election Details

Each election will be held on Friday, May 8, 2015 from 5:30 a.m. to 7:00 a.m. and 9:00 a.m. to 10:00 a.m. at the following locations for each unit: 21-RC-150198 (Gardena) – Upstairs Conference Room; 21-RC-150214 (El Monte) – Upstairs Conference Room; 21-CA-150229 (Chatsworth) – Conference Room; and 21-RC-150242 (Los Angeles) – Main Conference Room.

B. Voting Eligibility

Eligible to vote are those in the units who were employed during the payroll period ending **May 2, 2015** including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters in each unit.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **May 6, 2015**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties name in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays,

Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.
Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: May 4, 2015

Olivia Garcia
Regional Director
National Labor Relations Board, Region 21
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